



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0175]

**Hours of Service of Drivers: American Concrete Pumping Association (ACPA);
Application for Exemption**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to grant the American Concrete Pumping Association (ACPA) request for exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours of coming on duty. The exemption enables all concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires October 31, 2023.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-4225; E-mail: MCPSD@dot.gov. If you have questions

on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2018-0175 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation

(49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)) exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

ACPA seeks an exemption from the restriction of the RODS exception for short-haul drivers who return to their normal work reporting location and are released from work within 12 hours [49 CFR 395.1(e)(1)(ii)(A)]. Specifically, ACPA requests that concrete pump operators be treated the same as drivers operating ready-mixed concrete delivery vehicles as provided in 49 CFR 395.1(e)(1)(ii)(B). Section 395.1(e)(1)(ii)(B) allows drivers of ready-mixed concrete delivery vehicles to rely on the short-haul exception provided they return to their work-reporting locations and are released from work within 14 consecutive hours. The requested exemption would apply industry-wide to all concrete pump operators, concrete pumping companies, and drivers who deliver, set-up, and operate concrete pumps across the United States.

ACPA currently represents more than 600 member companies employing over 7,000 workers nationwide. The exemption would be applied to all interstate concrete pumper trucks and their operators. Although many of the trucks operate intrastate and

would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do routinely cross State lines.¹

ACPA explained that, like ready-mixed concrete delivery trucks and asphalt pavement delivery trucks, concrete pumps work with a perishable product delivered on a just-in-time basis. Timing and scheduling are critical to ensure a high-quality result. Allowing concrete pump drivers to use the short-haul exception, but return to their reporting location within 14 hours instead of 12 hours, would harmonize the hours-of-service rules for drivers of concrete pumps with the rules for drivers of the vehicles that supply the concrete.

ACPA explained that only a small percentage of the concrete pump operator's time is spent driving. On average, concrete pump operators spend between 25-32% of their time driving during a shift, and average daily driving distances are 20-25 miles. A pump operator has plenty of rest time with breaks ranging from 33% - 55% of their total time pumping. The majority of an operator's time is spent waiting on ready-mixed concrete for them to pump.

ACPA further explained that a concrete pump cannot operate without concrete supplied by a ready-mixed truck. Having conflicting requirements creates confusion on job sites. Clear and consistent requirements between the concrete pumps and the ready-mixed trucks will help ensure an equivalent level of safety on the job site. ACPA adds that concrete pumping and placement companies work in collaboration with ready-mixed companies. Scheduling local business contracts in compliance with State and Federal

¹ FMCSA does not generally have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. With few exceptions, an FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

regulations is complicated, given that some concrete companies operate under different FMCSA rules.

ACPA asserts that the concrete pumping industry has a solid safety record. Break periods, spent waiting for the ready-mixed truck deliveries, provide opportunity for concrete pump operators to rest and relax. The ACPA Operator Certification Program ensures, encourages, and educates the concrete pump operators on safe concrete pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines. Because of the concrete pump operators' training and preparation and numerous rest breaks, providing the additional 2 duty hours to concrete pump operators will have no impact on the level of safety provided under the short-haul exception. The requested exemption is for 5 years. A copy of the ACPA's application for exemption is available for review in the docket for this notice.

IV. Public Comments

On June 21, 2018, FMCSA published notice of this application and requested public comment (83 FR 28898). The Agency received four comments. One individual and the National Ready Mixed Concrete Association (NRMCA) filed comments in support of the proposed exemption. The Advocates for Highway and Auto Safety (Advocates) and the Alliance for Driver Safety & Security (Trucking Alliance) filed joint comments in opposition to the proposed exemption.

NRMCA wrote, "As outlined in ACPA's request, due to the nature of concrete pump operators' schedules and inherent work practices that are closely aligned with the ready mixed concrete industry, NRMCA agrees that increasing the return to work-

reporting location threshold from 12 to 14 hours would not diminish safety on our nation's roadways and ready mixed concrete construction sites.”

Mr. Jake Ford stated, “I feel the FMCSA should look into expanding the 12-hour short-haul exemption to 14 hours to more than just Concrete Pumps. I work in the oilfield industry as a DOT/Fleet/Compliance Manager. Just like the concrete pump operators my drivers drive very little and spend 85% of their time on an oilfield service location operating equipment.”

“The Advocates and the Trucking Alliance oppose the ACPA Application for exemption on the grounds that the Application fails to meet the statutory and regulatory requirements of applications for exemption. The Application is defective in several respects since it does not justify the need for the exemption, does not assess the safety impacts of the exemption, and does not explain or document how an equivalent level of safety would be achieved. All of which are statutory requirements of a valid exemption application.”

V. FMCSA Decision

FMCSA has evaluated ACPA's application and the public comments and decided to grant the exemption. The Agency believes that the exempted concrete pump drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The Agency granted similar exemptions to the National Asphalt Paving Association [January 26, 2018, (83 FR 3864)], and the Motion Picture Association of America [January 19, 2018, (83 FR 2869)]. In each of these situations, the driver spends relatively little time driving and is off duty for substantial periods of time during the day, making cumulative fatigue

unlikely. In any case, a 14-hour driving window has been allowed for most drivers since early 2004, with no evidence of adverse effects. There is no reason to believe that the experience of drivers of concrete pump vehicles will be different.

VI. Terms and Conditions for the Exemption

- (1) Drivers must return to the work reporting location and be released from work within 14 consecutive hours of coming on duty.
- (2) Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- (3) All motor carriers operating under this exemption must have a “Satisfactory” safety rating with FMCSA, or be “unrated.” Motor carriers with “Conditional” or “Unsatisfactory” FMCSA safety ratings are prohibited from using this exemption.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(ii)(A). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of the exemption: "ACPA"
- (b) Name of operating motor carrier and USDOT number,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and license number and State of issuance
- (f) Vehicle number and State license plate number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

TERMINATION

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: October 25, 2018

Raymond P. Martinez
Administrator

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